



Elizabeth Bourbon  
Senior Managing Counsel

January 23, 2015

**Via Federal Express No. 7726-9253-6125**  
*and Via Electronic Mail to [larson.ben@epa.gov](mailto:larson.ben@epa.gov)*

Ben Larson  
Compliance Division  
Office of Transportation and Air Quality  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue NW  
Washington, D.C. 20460

Re: OMB Information Collection Request No. 2020-0003  
Valero Energy Corporation (Company No. 4006)  
Valero Marketing and Supply Company (Company No. 6236)  
Valero Renewable Fuels (Company No. 3201)  
Confidential Business Information claim for RFS2 submissions

Dear Mr. Larson:

Valero Energy Corporation (EPA Co. ID # 4006), an affected business under EPA's Freedom of Information Act (FOIA) regulations in 40 CFR Part 2, together with certain of its subsidiaries and affiliated entities listed above who also are affected businesses (collectively "Valero" or "the Valero Companies"), hereby asserts that certain information submitted as required by EPA's Renewable Fuel Standard regulation (40 CFR part 80, subpart M) is Confidential Business Information, as is more fully explained in its comments accompanying this correspondence.

Please note that none of the entities within the family of Valero companies received notice in accordance with the procedures described in 40 CFR 2.204 that EPA is required to follow when it is determining whether an affected business's information is entitled to confidential treatment. EPA's FOIA regulation requires that *each* affected business shall be furnished with written notice affording the business an opportunity to comment by certified mail, by personal delivery, or by other means that allows verification of the fact and date of receipt [40 CFR 2.204(e)]. The affected business's receipt of notice serves as the starting point for a fifteen-working day comment period, after which an affected business is presumed to have waived any claim for confidential treatment of its information. In this instance, no such notice was provided to any of the Valero Companies.

Valero understands that EPA intends to make uniform final decisions regarding the confidentiality of broad categories of information based on the submissions of similarly situated entities other than Valero that did receive specific notice and any comments received from Valero or others in response to the

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January 23, 2015  
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Federal Register notice. Valero appreciates the scope of the task confronted by EPA in contacting the tremendous number of affected businesses whose confidential information has been requested by the Perkins Coie law firm; however, Valero respectfully submits that this procedure is not consistent with the requirements of EPA's FOIA regulations. Accordingly, by providing the enclosed comments, the Valero Companies do not waive any right (1) to supplement the enclosed comments; (2) to provide additional information or responses for EPA's consideration, should we receive notice that EPA intends to release any of our confidential business information; (3) to request reasonable additional time to provide such further responses in accordance with the provisions of 40 CFR 2.204(e)(2); (4) to assert deficiency of notice in any later proceedings and seek injunctive relief in an appropriate forum, should Valero's confidential business information be released improperly.

That said, Valero has worked diligently to provide the enclosed comments within the time provided. Please send any future correspondence regarding this matter to my attention, and please do not hesitate to call to discuss or to request clarification of any of the information provided herein.

Sincerely,



Elizabeth Bourbon

cc: John Braeutigam  
Mike Benien  
Brian Bartlett

*Enclosures: As Stated*

From: (210) 345-2131  
Danielle Butler  
VALERO  
One Valero Way

Origin ID: SATA



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San Antonio, TX 78249

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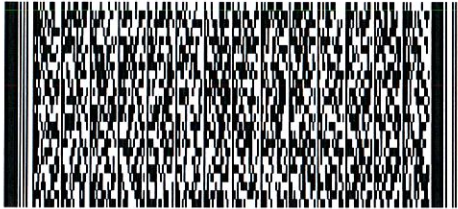
SHIP TO: (210) 345-2131  
**Mr. Ben Larson - Compliance Div.**  
**Ofc of Transportation & Air Quality**  
**1200 Pennsylvania Avenue NW**  
**U.S. EPA**  
**WASHINGTON, DC 20460**

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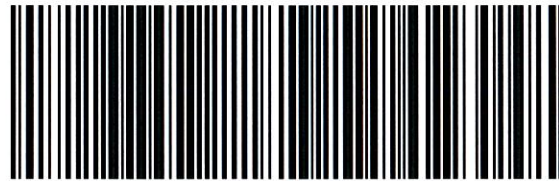
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## **Perkins Coie FOIA Request for RFS2 Submissions Comments of the Valero Companies regarding CBI**

In a Federal Register notice published December 11, 2014, EPA invited affected businesses whose confidential business information is sought by a FOIA requestor to demonstrate why their information should be protected from disclosure. As suggested in the Federal Register notice, the Valero Companies have provided responses to each of the eleven questions listed for each category of information identified in the Federal Register notice, with reference to specific data elements within each category as appropriate.

### **Annual Compliance Reports 2011-2014**

The Valero Companies have submitted each of their annual compliance reports subject to a request that the entire report be maintained as confidential business information. In response to EPA's solicitation of comments regarding whether each category of information included within these reports meets the criteria for CBI protection, Valero offers the following.

#### Compliance Elements

The "Compliance Elements" section of the annual RFS compliance reports includes some information that is not specific to the reporting entity; however, this category includes a data element for "Cellulosic biofuel waiver credits ID," which is a unique transaction reference ID provided by the U.S. Treasury specific to the reporting entity (identified as item "i" in the Federal Register notice discussion of typical contents of Annual Reports). Valero requests that this information be maintained as confidential as detailed below.

1. For what period of time do you request that the information be maintained as confidential, e.g., until a certain date, until the occurrence of a specified event, or permanently? If the occurrence of a specific event will eliminate the need for confidentiality, please specify that event.

**Valero requests that this information be maintained as confidential for the effective life of the RFS2 program. If the RFS2 program were to be repealed or revised to eliminate the requirement to fulfill an annual RVO for cellulosic fuels, this would eliminate the need for confidentiality.**

2. Information submitted to the EPA becomes stale over time. Why should the information you claim as confidential be protected for the time period specified in your answer to question #1?

**First, the RFS2 program is a long-term program under which information submitted pursuant to the regulations by an obligated party does not become "stale" in the sense suggested by the question. In particular, information concerning a party's compliance activity may form part of a long-term confidential business strategy, the public disclosure of which could enable market manipulators to further distort an already unlevel playing field. Accordingly, given the CBI sensitivity of the data elements contained in this category**

combined with the indefinite duration of the RFS2 program, it is appropriate for this information to be maintained as CBI for the life of the RFS2 program.

Second, the presence or absence of a cellulosic biofuel waiver credits ID indicates whether Valero purchased cellulosic waiver credits in a given year. This protected, proprietary business information could be used by suppliers or competitors to gain unfair insight into Valero's RVO credit/deficit status, bargaining position, and overall strategy for meeting its cellulosic RVO, compromising Valero's business position and leading to unfair leverage in negotiating pricing and other terms. For these reasons, disclosure will likely result in substantial harmful effects to Valero's competitive position.

3. What measures have you taken to protect the information claimed as confidential? Have you disclosed the information to anyone other than a governmental body or someone who is bound by an agreement not to disclose the information further? If so, why should the information be considered confidential?

Valero maintains the confidentiality of this information through internal company means specifically designed and intended to limit internal distribution and to prevent its release outside of the respective Valero companies, except to the EPA as required by the RFS2 regulations. Those efforts include, but are not limited to, measures and protocols which ensure that distribution of this information is limited within the company to those involved in this aspect of the business. To the extent this information needs to be shared among Valero employees, it is posted on an access-restricted intra-company portal, and databases including this type of information are similarly access-limited. Valero expects the EPA to also treat this information as confidential.

4. Is the information contained in any publicly available material such as the Internet, publicly available databases, promotional publications, annual reports, or articles? If so, specify which.

None of the data elements included in the "Compliance Elements" portion of the annual RFS compliance reports are contained in any publicly available material and, in particular, is none of the types of publicly available material referenced in question 4.

5. Is there any means by which a member of the public could obtain access to the information? Is the information of a kind that you would customarily not release to the public?

This information is not of a kind that Valero would customarily release to the public, and Valero is not aware of any means by which a member of the public could obtain access to the information without violating laws that protect proprietary information.

6. Has any governmental body made a determination as to the confidentiality of the information? If so, please attach a copy of the determination.

Valero is not aware of any previous confidentiality determination that has been rendered by any governmental body regarding this information.

7. For each item or category of information claimed as confidential, explain with specificity why release of the information is likely to cause substantial harm to your competitive position. Explain the specific nature of those harmful effects, why they should be viewed as substantial, and the causal relationship between disclosure and such harmful effects. How could your competitors make use of this information to your detriment?

**The presence or absence of a cellulosic biofuel waiver credits ID indicates whether Valero purchased cellulosic waiver credits in a given year. This information could be used by suppliers or competitors to gain unfair insight into the Valero Companies' RVO credit/deficit status, bargaining position, and overall strategy for meeting its cellulosic RVO, leading to unfair leverage in negotiating pricing and other terms and compromising Valero's business position.**

8. Do you assert that the information is submitted on a voluntary or a mandatory basis? Please explain the reason for your assertion. If you assert that the information is voluntarily submitted information, please explain whether the information is the kind that would customarily not be released to the public.

**Submission of this information is mandatory pursuant to the RFS2 regulation.**

9. Whether you assert the information as voluntary or involuntary, please address why disclosure of the information would tend to lessen the availability to the EPA of similar information in the future.

**Disclosure of competitively sensitive information that was submitted in response to a regulatory requirement based on a reasonable expectation that it would be maintained as confidential may undermine public confidence in the program and lead to reduced participation in the underlying business activities, which ultimately would lessen the availability to EPA of similar information.**

10. If you believe any information to be (a) trade secret(s), please so state and explain the reason for your belief. Please attach copies of those pages containing such information with brackets around the text that you claim to be (a) trade secret(s).

**This information is a proprietary, company-confidential commercial secret.**

11. Explain any other issue you deem relevant (including, if pertinent, reasons why you believe that the information you claim to be CBI is not emission data or effluent data).

N/A

#### Compliance Activity and Status

Each element included in the "Compliance Activity and Status" section of the annual RFS compliance reports (referenced as data elements j-r) is commercially sensitive information that

should be protected as CBI. Valero requests that this information be maintained as confidential as detailed below.

1. For what period of time do you request that the information be maintained as confidential, e.g., until a certain date, until the occurrence of a specified event, or permanently? If the occurrence of a specific event will eliminate the need for confidentiality, please specify that event.

**Valero requests that data element “m,” which relates to total volumes of gasoline and diesel production and renewable fuel export volumes, be maintained as confidential indefinitely. The remaining data elements under “Compliance Activity and Status” should be maintained as confidential for the effective life of the RFS2 program. If the RFS2 program were to be repealed or revised to eliminate the requirement to fulfill annual RVOs, this might eliminate the need for confidentiality with respect to the data elements other than overall gasoline and diesel production volumes, depending upon the specific elements of that repeal or revision. However, even in the event of a total repeal, information related to production volumes may remain a relevant basis for a claim of confidentiality indefinitely, because it indicates with precision the production capacities and utilization of Valero’s refineries.**

2. Information submitted to the EPA becomes stale over time. Why should the information you claim as confidential be protected for the time period specified in your answer to question #1?

**This information could be used by suppliers or competitors to gain unfair insight into Valero’s production levels of gasoline, diesel and renewable fuels, as well as its RVO credit/deficit status, bargaining position, and overall strategy for meeting its RVOs. This may lead to third parties achieving unfair leverage in negotiating pricing and other terms and compromising Valero’s business position with respect thereto. Further, because the information request encompasses several years’ worth of annual reports, this information could be used by competitors as well as suppliers to gain insight into the frequency and timing of maintenance outages at Valero refineries. Competitors could use this information to their advantage in determining when and where to increase production levels or to schedule their own outages to take advantage of Valero refineries being offline; maintenance vendors could use this information as negotiating leverage. In sum, disclosure will likely result in substantial harmful effects on Valero’s competitive position.**

3. What measures have you taken to protect the information claimed as confidential? Have you disclosed the information to anyone other than a governmental body or someone who is bound by an agreement not to disclose the information further? If so, why should the information be considered confidential?

**Valero maintains the confidentiality of this information by not releasing it outside of the company except to the EPA as required by the RFS2 regulations and, where applicable, to the U.S. Energy Information Administration, which maintains strict confidentiality regarding specific data submitted by individual refiners. EIA publicly releases production data only on an aggregated, de-identified basis based on PADD region. Distribution of this**

**information is limited within the company to those involved in this aspect of the business; to the extent this information needs to be shared among Valero employees, it is posted on an access-restricted intra-company portal, and databases including this type of information are similarly access-limited. Valero expects the EPA to also treat this information as confidential.**

4. Is the information contained in any publicly available material such as the Internet, publicly available databases, promotional publications, annual reports, or articles? If so, specify which.

**None of the data elements included in the “Compliance Activity and Status” portion of the annual RFS compliance reports are contained in any publicly available material. While Valero does report information to the U.S. EIA, as noted above, the U.S. EIA publicly releases gasoline and diesel production data only on an aggregated, de-identified basis based on PADD region.**

5. Is there any means by which a member of the public could obtain access to the information? Is the information of a kind that you would customarily not release to the public?

**This information is not of a kind that Valero would customarily release to the public, and Valero is not aware of any means by which a member of the public could legitimately obtain access to the information without violating laws that protect proprietary information.**

6. Has any governmental body made a determination as to the confidentiality of the information? If so, please attach a copy of the determination.

**Valero understands that the U.S. EIA regards an individual refiner’s gasoline and diesel production to be confidential, although we are not aware of a specific determination that has been made to that effect with regard to Valero’s gasoline and diesel production data. Similarly, we understand that U.S. Customs regards renewable fuel export data to be confidential, although we are not aware of specific determinations as to Valero’s export data. Regarding the other data elements addressed as part of the “Compliance Activity and Status” category, we are not aware that any governmental body has previously made a confidentiality determination regarding this information.**

7. For each item or category of information claimed as confidential, explain with specificity why release of the information is likely to cause substantial harm to your competitive position. Explain the specific nature of those harmful effects, why they should be viewed as substantial, and the causal relationship between disclosure and such harmful effects. How could your competitors make use of this information to your detriment?

**The data elements in this category related to gasoline and diesel production data, renewable fuels export volumes, and RVO quantification could be used by Valero’s suppliers, customers, and competitors to gain unfair insights and advantages with respect to Valero’s production volumes of gasoline, diesel and renewable fuels. This information could be used by competitors to adjust their own production volumes, which not only**

would put Valero at a competitive disadvantage, but also may result in competitive harm to the market and create antitrust risk for Valero and other market participants. Further, this type of information also could be used by wholesale customers to gain unfair insight and leverage in negotiating purchase of our products. Additionally, the data elements related to Valero's current and prior year RVO deficit/carryforward would yield insight into Valero's RVO credit/deficit status, bargaining position, and overall strategy for meeting its RVOs. This may lead to third parties achieving unfair leverage in negotiating pricing and other terms in transactions involving RINS or renewable fuels. Further, because the information request encompasses several years' worth of annual reports, this information could be used by competitors as well as suppliers to gain insight into proprietary, non-public business information regarding the frequency and timing of maintenance outages at Valero refineries. Competitors could use this information to their advantage in determining when and where to increase production levels or to schedule their own outages to take advantage of Valero refineries being offline; maintenance vendors could use this information as negotiating leverage.

8. Do you assert that the information is submitted on a voluntary or a mandatory basis? Please explain the reason for your assertion. If you assert that the information is voluntarily submitted information, please explain whether the information is the kind that would customarily not be released to the public.

**Submission of this information is mandatory pursuant to the RFS2 regulation.**

9. Whether you assert the information as voluntary or involuntary, please address why disclosure of the information would tend to lessen the availability to the EPA of similar information in the future.

**Disclosure of competitively sensitive information that was submitted in response to a regulatory requirement based on a reasonable expectation that it would be maintained as confidential may undermine public confidence in the program and lead to reduced participation in the underlying business activities, which ultimately would lessen the availability to EPA of similar information.**

10. If you believe any information to be (a) trade secret(s), please so state and explain the reason for your belief. Please attach copies of those pages containing such information with brackets around the text that you claim to be (a) trade secret(s).

**This information is a proprietary, company-confidential commercial secret.**

11. Explain any other issue you deem relevant (including, if pertinent, reasons why you believe that the information you claim to be CBI is not emission data or effluent data).

N/A

## **Transactional Information Contained in EPA's Moderated Transaction System**

Each of the Valero Companies has submitted certain transactional information contained in EPA's Moderated Transaction System subject to a request that this information be maintained as CBI. In response to EPA's solicitation of comments regarding whether each category of information included in this transactional information meets the criteria for CBI protection, Valero offers the following:

### **RIN trades**

**Valero requests that its Trading Partner Identifying Information and information pertaining to its Compliance Activity (data elements "c.", "d.", and "k." through "u." (inclusive) of the pertinent section of EPA's request) be maintained as confidential for the reasons set forth below.**

1. For what period of time do you request that the information be maintained as confidential, e.g., until a certain date, until the occurrence of a specified event, or permanently? If the occurrence of a specific event will eliminate the need for confidentiality, please specify that event.

**Valero requests that this information be maintained as confidential for the effective life of the RFS2 program. If the RFS2 program were to be repealed or revised to eliminate the requirement to fulfill an annual RVO, such an occurrence could eliminate the need for confidentiality for this information.**

2. Information submitted to the EPA becomes stale over time. Why should the information you claim as confidential be protected for the time period specified in your answer to question #1?

**First, the RFS2 program is a long-term program under which information submitted pursuant to the regulations by an obligated party does not become "stale" in the sense suggested by the question. In particular, information concerning a party's compliance activity may form part of a long-term confidential business strategy, the public disclosure of which could enable market manipulators to further distort an already unlevel playing field. Accordingly, given the CBI sensitivity of the data elements contained in this category combined with the indefinite duration of the RFS2 program, it is appropriate for this information to be maintained as CBI for the life of the RFS2 program.**

**Second, public disclosure of this protected, proprietary information concerning Valero's RIN trades would allow suppliers and competitors to gain unfair insight into Valero's RVO credit/deficit status, bargaining position, and overall business strategy for meeting its obligations under the RFS2 regulations, leading to unfair leverage in negotiating pricing and other terms. Specifically, public disclosure of the Trading Partner Identifying Information would compromise and irreparably harm Valero's relationship with its**

relevant business partners. Other than Valero's name as an obligated party, Valero considers the names of the parties involved in a RIN trading transaction, our business partners, and other relevant identifying information to be CBI. Furthermore, public disclosure of Valero's compliance activity with respect to RIN trading would unfairly compromise Valero's commercial interests and negotiating position. The release of information concerning Valero's RIN trading activity, including but not limited to RIN quantity, batch volume, assignment code, buy/sell reason code, and any transaction detail comment(s) entered in EMTS would provide a road map to third parties that would enable them to unfairly forecast Valero's current and future obligations under the RFS2 regulations to their advantage and to Valero's detriment. Such disclosure would also provide prospective RIN sellers, competitors, and/or third-party speculators relatively clear and direct insight into Valero's ability and methodology for complying with its RFS2 obligations. For those reasons, disclosure will likely result in substantial harmful effects to Valero's competitive position.

3. What measures have you taken to protect the information claimed as confidential? Have you disclosed the information to anyone other than a governmental body or someone who is bound by an agreement not to disclose the information further? If so, why should the information be considered confidential?

**Valero maintains the confidentiality of this information through internal company means specifically designed and intended to limit internal distribution and prevent its release outside of the respective Valero companies except to the EPA as required by the RFS2 regulations. Those efforts include, but are not limited to, measures and internal protocols which ensure that distribution of this information is limited within the company to those involved in this aspect of the business; to the extent this information needs to be shared among Valero employees, it is posted on an access-restricted intra-company portal, and databases including this type of information are similarly access-limited. Valero expects the EPA to also treat this information as confidential.**

4. Is the information contained in any publicly available material such as the Internet, publicly available databases, promotional publications, annual reports, or articles? If so, specify which.

**None of the data elements included in this category for which CBI is claimed are contained in any publicly available material, and in particular, in none of the types of publicly-available material referenced in question 4.**

5. Is there any means by which a member of the public could obtain access to the information? Is the information of a kind that you would customarily not release to the public?

**This information is not of a kind that Valero would customarily release to the public. Valero is not aware of any means by which a member of the public could legitimately obtain access to the information without violating laws that protect proprietary information.**

6. Has any governmental body made a determination as to the confidentiality of the information? If so, please attach a copy of the determination.

**Valero is not aware that of any previously made confidentiality determination that has been rendered by a governmental body regarding this information.**

7. For each item or category of information claimed as confidential, explain with specificity why release of the information is likely to cause substantial harm to your competitive position. Explain the specific nature of those harmful effects, why they should be viewed as substantial, and the causal relationship between disclosure and such harmful effects. How could your competitors make use of this information to your detriment?

**In addition to the reasons set forth in the response to question #2 above, release of information contained in the data elements in this category for which CBI status is claimed would provide knowledgeable parties with the ability to distort through market manipulation an already unbalanced playing field between Valero, as an obligated party that manufactures motor vehicle fuels, and those other parties who control blending of those fuels with biofuels.**

**As a leading manufacturer of transportation fuels, Valero is particularly vulnerable to manipulative positioning by speculators, especially given the magnitude of its RVO relative to smaller manufacturers. Further more, with the benefit of unfair insight into the nature and extent of specific obligated parties' obligations, market-related entities such as banks, hedge funds, and trading houses would be encouraged to enter the RINs markets for speculative gains based solely on the current and forecasted obligation positions. RIN prices have historically been extremely volatile and damaging for the motor fuels manufacture industry as a whole; introduction and dissemination of specific RIN trading data (including specific RVOs, RIN quantity, batch volume, assignment codes, buy/sell reason codes, and any transaction detail comments) would encourage non-obligated parties to take market positions in order to extort prices higher than free markets would normally bear. Prices exacerbated by the absence of free market RIN pricing, and coupled with third party access to a given obligated party's specific compliance activity details, could force such an obligated party into non-compliance with the RFS2 regulation in a given year.**

8. Do you assert that the information is submitted on a voluntary or a mandatory basis? Please explain the reason for your assertion. If you assert that the information is voluntarily submitted information, please explain whether the information is the kind that would customarily not be released to the public.

**Submission of this information is mandatory pursuant to the RFS2 regulation.**

9. Whether you assert the information as voluntary or involuntary, please address why disclosure of the information would tend to lessen the availability to the EPA of similar information in the future.

**Disclosure of competitively sensitive information that was submitted in response to a regulatory requirement based on a reasonable expectation that it would be maintained as confidential may undermine public confidence in the program and lead to reduced participation in the underlying business activities, which ultimately would lessen the availability to EPA of similar information.**

10. If you believe any information to be (a) trade secret(s), please so state and explain the reason for your belief. Please attach copies of those pages containing such information with brackets around the text that you claim to be (a) trade secret(s).

**This information is a proprietary, company-confidential commercial secret.**

11. Explain any other issue you deem relevant (including, if pertinent, reasons why you believe that the information you claim to be CBI is not emission data or effluent data).

**None.**

**RIN generation transactions**

**Valero requests that information pertaining to its RIN generation transactions (data elements "a.", "c.", "d.", "f.", "h." through "j." (inclusive), "l.", "o.", and "p." of the pertinent section of EPA's request) be maintained as confidential for the reasons set forth below.**

1. For what period of time do you request that the information be maintained as confidential, e.g., until a certain date, until the occurrence of a specified event, or permanently? If the occurrence of a specific event will eliminate the need for confidentiality, please specify that event.

**Valero requests that this information be maintained as confidential indefinitely.**

2. Information submitted to the EPA becomes stale over time. Why should the information you claim as confidential be protected for the time period specified in your answer to question #1?

**In addition to the reasons set forth in Valero's responses to questions #2 and #7 above with respect to the data elements of the "RIN trade" category, which are incorporated by reference herein, Valero requests that the identified data elements with respect to this "RIN generation transactions" category be maintained as CBI because these data elements contain facility-identifying information and specific production information, the public disclosure of which would seriously impair Valero's long-term business strategy. Accordingly, given the CBI sensitivity of the data elements contained in this category, it is appropriate for this information to be maintained as CBI even beyond the life of the RFS2 program.**

3. What measures have you taken to protect the information claimed as confidential? Have you disclosed the information to anyone other than a governmental body or someone who is bound

by an agreement not to disclose the information further? If so, why should the information be considered confidential?

**Valero maintains the confidentiality of this information through internal company means specifically designed and intended to limit internal distribution and prevent its release outside of the respective Valero companies except to EPA as required by the RFS2 regulations. These efforts include, but are not limited to, measures and internal protocols which ensure that distribution of this information is limited within to company to those involved in this aspect of the business; to the extent this information needs to be shared among Valero employees, it is posted on an access-restricted intra-company portal, and databases including this type of information are similarly access-limited. Valero expects the EPA to also treat this information as confidential.**

4. Is the information contained in any publicly available material such as the Internet, publicly available databases, promotional publications, annual reports, or articles? If so, specify which.

**None of the data elements included in this category for which CBI is claimed are contained in any publicly available material, and in particular, in none of the types of publicly available material referenced in question 4.**

5. Is there any means by which a member of the public could obtain access to the information? Is the information of a kind that you would customarily not release to the public?

**This information is not of a kind that Valero would customarily release to the public. Valero is not aware of any means by which a member of the public could legitimately obtain access to the information without violating laws that protect proprietary information.**

6. Has any governmental body made a determination as to the confidentiality of the information? If so, please attach a copy of the determination.

**While Valero is not aware of a previous CBI determination specific to Valero's information, EPA did recognize in its recent revisions to the RFS Quality Assurance Program (79 FR 42078, 42108) that such categories of information are not publicly available and agreed to continue its current practice to "treat as CBI any registration or reported information claimed as confidential, unless a specific determination to the contrary is made in a given case." Valero is not aware of any other confidentiality determination that has been rendered by a governmental body regarding this information.**

7. For each item or category of information claimed as confidential, explain with specificity why release of the information is likely to cause substantial harm to your competitive position. Explain the specific nature of those harmful effects, why they should be viewed as substantial, and the causal relationship between disclosure and such harmful effects. How could your competitors make use of this information to your detriment?

The data elements in this category include precise information regarding batch volumes, feedstock types and amounts, identification of co-products, and other renewable fuel production information that is proprietary to Valero Renewable Fuels. If this information were made public, competitors would gain unfair insight into Valero's operations, marketing, and production process that could enable them to design their own marketing and production programs to undercut Valero competitively. Suppliers and customers would gain insight into Valero's demand for feedstocks, denaturant, and other commodities used in production that would lead to unfair leverage in negotiating pricing and other deal terms. Further, to the extent the optional fields are utilized to reference supporting documents, these fields could be cross-referenced to match the Valero companies' transaction reports with those of our counterparties so that transaction details regarding volumes, pricing, and other highly sensitive information could be deduced.

8. Do you assert that the information is submitted on a voluntary or a mandatory basis? Please explain the reason for your assertion. If you assert that the information is voluntarily submitted information, please explain whether the information is the kind that would customarily not be released to the public.

**Submission of this information is mandatory pursuant to the RFS2 regulation.**

9. Whether you assert the information as voluntary or involuntary, please address why disclosure of the information would tend to lessen the availability to the EPA of similar information in the future.

**Disclosure of competitively sensitive information that was submitted in response to a regulatory requirement based on a reasonable expectation that it would be maintained as confidential may undermine public confidence in the program and lead to reduced participation in the underlying business activities, which ultimately would lessen the availability to EPA of similar information.**

10. If you believe any information to be (a) trade secret(s), please so state and explain the reason for your belief. Please attach copies of those pages containing such information with brackets around the text that you claim to be (a) trade secret(s).

**This information is a proprietary, company-confidential commercial secret.**

11. Explain any other issue you deem relevant (including, if pertinent, reasons why you believe that the information you claim to be CBI is not emission data or effluent data).

None.

#### **RIN separation transactions**

**Valero requests that information pertaining to its RIN separation transactions (data elements "c.", "d.", "f.", and "m." of the pertinent section of EPA's request) be maintained as confidential for the reasons set forth below.**

1. For what period of time do you request that the information be maintained as confidential, e.g., until a certain date, until the occurrence of a specified event, or permanently? If the occurrence of a specific event will eliminate the need for confidentiality, please specify that event.

**Valero requests that this information be maintained as confidential for the effective life of the RFS2 program. If the RFS2 program were to be repealed or revised to eliminate the requirement to fulfill an annual RVO for cellulosic fuels, such an occurrence could eliminate the need for confidentiality for this information.**

2. Information submitted to the EPA becomes stale over time. Why should the information you claim as confidential be protected for the time period specified in your answer to question #1?

**In addition to the reasons set forth in Valero's responses to questions #2 and #7 above with respect to the data elements of the "RIN trade" and "RIN generation transactions" categories, which are incorporated by reference herein, Valero requests that the identified data elements with respect to this "RIN separation transactions" category be maintained as CBI indefinitely because these data elements contain information relating to RIN quantity, batch volume, and other information concerning reasons why Valero separated the RINs from the renewable fuel, the public disclosure of which would seriously impair Valero's long-term business strategy and likely result in substantial harmful effects to Valero's competitive position.**

3. What measures have you taken to protect the information claimed as confidential? Have you disclosed the information to anyone other than a governmental body or someone who is bound by an agreement not to disclose the information further? If so, why should the information be considered confidential?

**Valero maintains the confidentiality of this information through internal company means specifically designed and intended to limit internal distribution and prevent its release outside of the respective Valero companies except to EPA as required by the RFS2 regulations. These efforts include, but are not limited to, measures and internal protocols which ensure that distribution of this information is limited within to company to those involved in this aspect of the business; to the extent this information needs to be shared among Valero employees, it is posted on an access-restricted intra-company portal, and databases including this type of information are similarly access-limited. Valero expects the EPA to also treat this information as confidential.**

4. Is the information contained in any publicly available material such as the Internet, publicly available databases, promotional publications, annual reports, or articles? If so, specify which.

**None of the data elements included in this category for which CBI is claimed are contained in any publicly available material, and in particular, in none of the types of publicly available material referenced in question 4.**

5. Is there any means by which a member of the public could obtain access to the information? Is the information of a kind that you would customarily not release to the public?

**This information is not of a kind that Valero would customarily release to the public. Valero is not aware of any means by which a member of the public could legitimately obtain access to the information without violating laws that protect proprietary information.**

6. Has any governmental body made a determination as to the confidentiality of the information? If so, please attach a copy of the determination.

**Valero is not aware of any previously made a confidentiality determination that has been rendered by a governmental body regarding this information.**

7. For each item or category of information claimed as confidential, explain with specificity why release of the information is likely to cause substantial harm to your competitive position. Explain the specific nature of those harmful effects, why they should be viewed as substantial, and the causal relationship between disclosure and such harmful effects. How could your competitors make use of this information to your detriment?

**The abovereferenced data elements related to RIN separation transactions contain proprietary, confidential commercial information relating to RIN quantities, batch volumes, and other information concerning reasons why Valero separated the RINs from the renewable fuel, the public disclosure of which would provide customers, suppliers, and competitors with specific and unfair insights into Valero's blending capabilities and practices that would compromise Valero's bargaining position in relation to those entities. Release of this information would seriously impair Valero's long-term business strategy and likely result in substantial harmful effects to Valero's competitive position. In addition to the reasons set forth in the response to question #2 above, which are incorporated by reference herein, Valero also considers whether it separates RINs from renewable fuel to be CBI and the public disclosure of such information would cause it substantial harm.**

8. Do you assert that the information is submitted on a voluntary or a mandatory basis? Please explain the reason for your assertion. If you assert that the information is voluntarily submitted information, please explain whether the information is the kind that would customarily not be released to the public.

**Submission of this information is mandatory pursuant to the RFS2 regulation.**

9. Whether you assert the information as voluntary or involuntary, please address why disclosure of the information would tend to lessen the availability to the EPA of similar information in the future.

**Disclosure of competitively sensitive information that was submitted in response to a regulatory requirement based on a reasonable expectation that it would be maintained as confidential may undermine public confidence in the program and lead to reduced**

**participation in the underlying business activities, which ultimately would lessen the availability to EPA of similar information.**

10. If you believe any information to be (a) trade secret(s), please so state and explain the reason for your belief. Please attach copies of those pages containing such information with brackets around the text that you claim to be (a) trade secret(s).

**This information is a commercial secret rather than a trade secret.**

11. Explain any other issue you deem relevant (including, if pertinent, reasons why you believe that the information you claim to be CBI is not emission data or effluent data).

**None.**

### **RIN retirement transactions**

Valero requests that information pertaining to its RIN separation transactions (data elements “b.” through “g.” (inclusive), “i.”, “l.”, “m.”, and “o.” of the pertinent section of EPA’s request) be maintained as confidential for the reasons set forth below.

1. For what period of time do you request that the information be maintained as confidential, e.g., until a certain date, until the occurrence of a specified event, or permanently? If the occurrence of a specific event will eliminate the need for confidentiality, please specify that event.

**Valero requests that data element “c,” which relates to total quantity of RINs retired, be maintained as confidential indefinitely. The remaining data elements of the RIN should be maintained as confidential for the effective life of the RFS2 program. If the RFS2 program were to be repealed or revised to eliminate the requirement to fulfill annual RVOs, this might eliminate the need for confidentiality with respect to the data elements other than the amount of RINs retired, depending upon the specific elements of that repeal or revision. However, even in the event of a total repeal, information related to RIN retirement quantities may remain a relevant basis for a claim of confidentiality indefinitely.**

2. Information submitted to the EPA becomes stale over time. Why should the information you claim as confidential be protected for the time period specified in your answer to question #1?

**Valero requests that data element “c,” which indicates quantities of RINs retired, should be maintained as confidential indefinitely because this information can be used to deduce production volumes on a facility-specific basis. This information would have substantial commercial harm to Valero even if the RFS were to be repealed. Valero requests that the remaining data elements included in RIN retirement reports be maintained as confidential for the duration of the RFS2 program because this information could be used by suppliers, competitors, speculators, or other third parties to gain unfair insight into Valero’s RVO credit/deficit status, bargaining position, and overall strategy for meeting its RVOs as long as the RFS2 program remains in effect. This may lead to third parties achieving unfair**

**leverage in negotiating pricing and other terms and compromising Valero's business position with respect thereto. As a specific example, if it were known publicly that Valero had incurred a deficit in one year, speculators could hoard RINs, knowing that Valero would have no option but to pay an inflated price in order to avoid carrying forward a deficit into a subsequent year. In sum, disclosure will likely result in substantial harmful effects on Valero's competitive position for the life of the RFS2 program and beyond.**

3. What measures have you taken to protect the information claimed as confidential? Have you disclosed the information to anyone other than a governmental body or someone who is bound by an agreement not to disclose the information further? If so, why should the information be considered confidential?

**Valero maintains the confidentiality of this information by not releasing it outside of the company except to the EPA as required by the RFS2 regulations. Distribution of this information is limited within the company to those involved in this aspect of the business; to the extent this information needs to be shared among Valero employees, it is posted on an access-restricted intra-company portal, and databases including this type of information are similarly access-limited. Valero expects the EPA to also treat this information as confidential.**

4. Is the information contained in any publicly available material such as the Internet, publicly available databases, promotional publications, annual reports, or articles? If so, specify which.

**None of the data elements included in this category for which CBI is claimed are contained in any publicly available material.**

5. Is there any means by which a member of the public could obtain access to the information? Is the information of a kind that you would customarily not release to the public?

**This information is not released to the public and Valero is not aware of any means by which a member of the public could obtain access to the information. This information is not of a kind that Valero would customarily release to the public.**

6. Has any governmental body made a determination as to the confidentiality of the information? If so, please attach a copy of the determination.

**Valero is not aware that any governmental body has previously made a confidentiality determination regarding this information.**

7. For each item or category of information claimed as confidential, explain with specificity why release of the information is likely to cause substantial harm to your competitive position. Explain the specific nature of those harmful effects, why they should be viewed as substantial, and the causal relationship between disclosure and such harmful effects. How could your competitors make use of this information to your detriment?

In addition to the reasons set forth in the response to question #2 above, which are incorporated by reference herein, Valero also considers RIN retirements to be CBI and the public disclosure of such information would cause substantial harm because if EPA publicly released Valero's RIN retirements by plant by year, a third party could calculate volume of renewable fuels that Valero purchased from a given producer and could leverage this information in negotiating RIN prices or other commercial agreements with Valero. This would provide knowledgeable parties with the ability to distort through market manipulation an already unbalanced playing field between Valero, as an obligated party that manufactures motor vehicle fuels, and those other parties who control blending of those fuels with biofuels.

As a leading manufacturer of transportation fuels, Valero is particularly vulnerable to manipulative positioning by speculators, especially given the magnitude of its RVO relative to smaller manufacturers. Furthermore, with the benefit of unfair insight into the nature and extent of specific obligated parties' obligations, market-related entities such as banks, hedge funds, and trading houses would be encouraged to enter the RINs markets for speculative gains based solely on the current and forecasted obligation positions. RIN prices have historically been extremely volatile and damaging for the motor fuels manufacture industry as a whole; introduction and dissemination of specific information regarding RIN retirements would encourage non-obligated parties to take market positions in order to extort prices higher than free markets would normally bear. Prices exacerbated by the absence of free market RIN pricing, and coupled with third party access to a given obligated party's specific compliance activity details, could force such an obligated party into non-compliance with the RFS2 regulation in a given year or could force an obligated party to pay an inflated price in order to maintain compliance.

Finally, knowing the number of RINs retired, a third party could estimate an obligated party's production volumes since the RVO percentages are public information. RIN retirement information could be used to deduce production and import/export volumes of gasoline and diesel, which are otherwise maintained as strictly confidential. The EIA, for example, treats such information as CBI and does not disclose to the public individual facility production information.

8. Do you assert that the information is submitted on a voluntary or a mandatory basis? Please explain the reason for your assertion. If you assert that the information is voluntarily submitted information, please explain whether the information is the kind that would customarily not be released to the public.

**Submission of this information is mandatory pursuant to the RFS2 regulation.**

9. Whether you assert the information as voluntary or involuntary, please address why disclosure of the information would tend to lessen the availability to the EPA of similar information in the future.

**Disclosure of competitively sensitive information that was submitted in response to a regulatory requirement based on a reasonable expectation that it would be maintained as**

**confidential may undermine public confidence in the program and lead to reduced participation in the underlying business activities, which ultimately would lessen the availability to EPA of similar information.**

10. If you believe any information to be (a) trade secret(s), please so state and explain the reason for your belief. Please attach copies of those pages containing such information with brackets around the text that you claim to be (a) trade secret(s).

**This information is a commercial secret rather than a trade secret.**

11. Explain any other issue you deem relevant (including, if pertinent, reasons why you believe that the information you claim to be CBI is not emission data or effluent data).

**None.**